

**IN THE UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF ILLINOIS  
EASTERN DIVISION**

MATTHEW F. ABBOTT,  
a resident of Indiana,

Plaintiff,

v.

STARLINGER NORTH AMERICA, INC.,  
an Illinois Corporation,  
MAPLAN MASCHINEN und TECHNISCHE  
ANLAGEN PLANUNGS und FERTIGUNGS  
Gesellschaft m.b.H, an Austrian company, and  
STARLINGER & COMPANY Gesellschaft  
m.b.H, an Austrian company,

Defendants.

**CASE NO: 08 C 642  
JURY TRIAL DEMANDED**

**PLAINTIFF'S AMENDED APPLICATION FOR  
REQUEST FOR INTERNATIONAL ASSISTANCE**

Plaintiff, MATTHEW F. ABBOTT ("plaintiff"), by and through his counsel, **KENNETH J. ALLEN & ASSOCIATES, P.C.**, files his application for request for international assistance to the court, and hereby requests that this Court request the appropriate Judicial Authority in Austria to assist in obtaining service of process on Defendants, **STARLINGER & COMPANY Gesellschaft m.b.H** (herein "Starlinger") and **MAPLAN MASCHINEN und TECHNISCHE** (herein "Maplan") (collectively, "the Austrian defendants"). For his application, Plaintiff states:

1. This cause is a product liabilities action wherein the Austrian defendants were the manufacturer of a Maplan Moulding Machine (herein "the machine"), which was sold or otherwise distributed to Plaintiff and Plaintiff's employer, NISCO, in an unreasonable dangerous, defective condition, and that the machine was unsafe and was not reasonably fit for its intended use. While using the machine in its intended use, Plaintiff suffered serious and permanent injuries when the machine caught, burned, and traumatically amputated Plaintiff's fingers on his dominant hand, as well as other injuries and damage sustained by the Plaintiff.

2. Plaintiff has thus far been unable to serve the Austrian defendants with process pursuant to Federal Rule of Civil Procedure 4.

3. Pursuant to Federal Rules of Civil Procedure 4(f)(2)(B) and the Austrian Service Act, *Austrian Official Gazette (BGBl)* 200/1982 corporations or other entities duly formed and organized under the laws of Austria can only be served through letter rogatory service and through the proper diplomatic channels in the manner prescribed by Austrian law for the service of such documents. *Prewitt Enterprises, Inc. v. Organization of Petroleum Exporting Countries*, 353 F.3d 916 (11<sup>th</sup> Cir.2003); *In re Ski Train Fire in Kaprun, Austria on November 11, 2000*, 2003 WL 21659368 (S.D.N.Y.2003); Exhibit 6, Declaration of Gary A. Crowe. *See also: Hypo Bank Claims Group, Inc. v. American Stock Transfer & Trust Co.*, 4 Misc.3d 1020, 791 N.Y.S.2d 870, (N.Y.Sup.2004); 22 C.F.R. § 92.54

(A letter rogatory is "a formal request from a court in which an action is pending, to a foreign court to perform some judicial act.").

4. It is Plaintiff's understanding that Starlinger can presently be served at the following address:

Starlinger & Company Gesellschaft mbH  
Sonnenuhrgasse 4  
A-1060 Vienna  
Austria

5. It is Plaintiff's understanding that Maplan can presently be served at the following address:

Maplan Maschinen und technische  
Schoellergasse 9  
A-2640 Ternitz  
Austria

6. It is necessary for Plaintiff to serve process on the Austrian defendants in order to effectuate Plaintiff's rights and seek appropriate resolution in this matter.

7. A request from this Court will substantially aid the Plaintiff in serving the Austrian defendants in accordance with laws of the United States and International laws and treaties, as well as the Federal Rules of Civil Procedure. Plaintiff respectfully requests that the Court issues requests to the appropriate Judicial Authority in Austrian to assist in the service of process on the Austrian Defendants and request that the individual effectuating the process on the Austrian defendants execute a certificate of

service, and return it, together with copy of the documents served, to Northern District of Illinois, Eastern Division.

8. Attached as Exhibit 2 are copies of the Request for International Assistance Plaintiff desires to have issued. Plaintiff respectfully requests that these separate requests be issued, and that said requests are stamped with an Official Court Seal, ink stamped or raised, so as to certify the requests authenticity with the appropriate Austrian authorities.

9. Plaintiff stands ready to reimburse the appropriate individuals and Austrian authorities for reasonable expenses incurred in executing the requests for judicial assistance.

WHEREFORE, Plaintiff MATTHEW F. ABBOTT respectfully requests that this Court issue the separate Requests for International Assistance, attached as Exhibit 2, with an official seal by the court in order to assist Plaintiff in serving process on Defendants, STARLINGER & COMPANY Gesellschaft m.b.H and MAPLAN MASCHINEN und TECHNISCHE, and for all other relief which is just and proper.

Respectfully submitted,  
**KENNETH J. ALLEN & ASSOCIATES, P.C.**  
Attorneys for Plaintiff

s/ Bryan L. Bradley

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Bryan L. Bradley  
Adrian P. Smith

Service List

Matthew Abbott v. Starlinger North America, Inc., et al.  
No. 1:08 CV 642

Attorneys for Defendants

David W. Clark  
Peregrine, Stime, Newman, Ritzman & Bruckner, Ltd.  
221 East Illinois Street  
Wheaton, IL 60187



Refer to Office Indicated

☒ ALLEN LAW BUILDING  
1109 Glendale Boulevard  
Valparaiso, IN 46383

☐ CHASE BANK CENTER  
8585 Broadway, 8<sup>th</sup> Floor  
Merrillville, IN 46410

☐ CHARTER ONE BANK  
17450 South Halsted St.  
Homewood, IL 60430

☐ SMURFIT-STONE BUILDING  
150 North Michigan Ave.  
Chicago, IL 60606

INJURY ATTORNEYS

219.465.6292

219.736.6292

708.799.6292

312.236.6292